IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

INCOME TAX APPEAL NO. 108 OF 2002

M/s.Calico Industrial Engineers — Appellant

vs.

Deputy Commissioner of Income Tax,
Special Range 48, Mumbai. — Respondent

Mr.S.J. Mehta for the appellant.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 1st October 2004

P.C.

Heard Mr.S.J.Mehta, the learned counsel for the appellant.

2. While disallowing the payments on account of processing charges to the extent of Rs.5,15,482/- for Assessment Year 1991-92, Rs.7,13,025/- for Assessment Year 1992-93, Rs.15,17,103/- for Assessment Year 1995-96, the Income Tax Appellate Tribunal considered the matter thus:

> "10. We have carefully considered rival submissions and perused the record. It is well settled principle of law that a person who claimed deduction has to prove that it was incurred for the purpose of business. In furtherance of this onus casted upon the assessee, it is the duty of the assessee to

identify the persons to whom payments were made and establish before the AO that such payments are genuine. As could be seen from the past records, the AO has called upon the assessee to produce atleast some workers for examination, but the assessee did not produce them. It may be noted that in the A.Ys. 1984-85 to 1989-90 the total claim under the head 'processing charges' as not very high and cash payments out of such processing charges were also reasonable. As could be seen from the orders of the AO/CIT(A) for the earlier assessment years, the amount disallowed was between 10,000 to 1,50,000/- and the total cash payments were around Rs.5,00,000/-. In the A.Y. 1988-89, the sales were to the tune of Rs.3.5 crores on which the assessee claimed processing charges of Rs.27,08,083/- out of which cash payments to the daily workers were shown at Rs.7,47,577/-. Similarly, for the A.Y. 1989-90, the turnover was Rs.3.2 crores and the processing charges paid in case was to the tune of Rs.5,75,992/-. For the A.Y. 1987-88 also, the total claim under the head 'processing charges' was to the tune of Rs.20,14,752/- out of which payment made in cash was to the tune of Rs.4,00,680/- whereas in the year under consideration, the increase in the processing charges and the cash payments is not commensurate with the increase in turnover. For the A.Y. 1991-92, the assessee declared sales of Rs.4.5 crores. For A.Y. 1992-93, sales were shown at 4.9 crores and for A.Y. 1995-96, it was Rs.8.37 crores. As against this, the assessee claimed to have incurred expenditure on account of processing charges to the tune of Rs.42,86,298/- in A.Y. 1991-92, Rs.42,62,628/- in A.Y. 1992-93 and Rs.84,73,171/- in A.Y. 1995-96, and out of which, cash payments on self made vouchers were to the tune of Rs.15,46,447 for the A.Y. 1991-92, Rs.21,39,074 for A.Y. 1992-93 and Rs.36,97,745/- for A.Y. 1995-96 respectively.

11. As substantial expenditure was incurred in cash the A.O. called upon the assessee to furnish names and addresses of the persons, but the assessee could not produce any evidence except the self made vouchers. The case of the assessee is that they are temporary workers, who do not have a permanent address. We are unable to appreciate the contention of the assessee. As it could be

> seen from the vouchers, these so-called temporary workers have carried on skilled jobs such as assembly work, welding, painting etc. and it is difficult to believe that the assessee would go on changing workmen to carry out such jobs upon the costly machines of the assessee. It is common practice that people who are temporarily employed are called in from time to time, or atleast such workers may keep in touch with management from time to time so as to eke out their living. Thus it would not be difficult for the assessee to obtain their address particularly when the AO has disallowed, year after year, a portion of expenditure, for want of identity of the parties. Compared to the earlier years' expenditure, the expenditure was high the assessee has not furnished any evidence except the self made vouchers to prove that the cash payments are made to temporary workers for the purpose of business. Therefore, the AO was very reasonable in disallowing only 1/3rd of the cash payments."

3. The consideration of the matter by the Tribunal cannot be said to suffer from any legal infirmity.

4. While dealing with the payment of commission, the Income Tax Appellate Tribunal disallowed the payment of commission to the extent of Rs.16,20,850/- for assessment year 1991-92, Rs.8,66,400/- for the assessment year 1992-93 and Rs.17,87,275/- for the assessment year 1995-96. The Income Tax Appellate Tribunal considered the matter thus:

> "21. We have carefully considered the rival submissions are perused the record. As could be seen from clause (c) of the agreement dated 1.4.1989, third party commission is payable by Calico directly to the concerned party. It was also mentioned therein that M/s.ATE will discuss the matter with Calico before

finalisation of the commission payable to third parties which implies that the assessee, prima facie, should be satisfied that the services of the third parties are necessary for booking orders. In order to consider the necessary of payment, the assessee should atleast know the names and address of the third party as otherwise the words 'discussed with Calico' in clause (C) would have no meaning and as a business man, the assessee would not have agreed to pay commission to M/s.ATE without verifying the names of the persons. However, the conduct of the assessee in nor furnishing the details such as the names of the parties to whom third party commission is paid nature of services rendered etc. has forced the AO as well as CIT(A) to draw an adverse conclusion. It was treated as a secret commission prohibited under Explanation 37(I) of the Act. Inspite of the repeated disallowances, year after year, and even at the stage of the second appeal, the assessee has not furnished the names of the parties to whom commission was paid. As could be seen from the case-law cited by the ld.D.R. the onus is on the assessee to prove that the commission was paid to an identified party and it was in connection with the services rendered for the purpose of assessee's business. In the instant case, assessee has not furnished the names of the parties and the nature of the services rendered by them is also not clear. Under these circumstances, we are of the view that the disallowance made by the AO and confirmed by the CIT(A) is in order."

5. The consideration of the matter by the Tribunal is based on factual aspects. No legal infirmity is found in the impugned order.

6. No substantial question of law arises.

7. Appeal is dismissed in limine.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)